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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/727,328

12/03/2003

John Kirchgeorg

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04/17/2006

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EXAMINER

LAYNO, CARL HERNANDZ

ART UNIT

PAPER NUMBER

3766

DATE MAILED: 04/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/727,328

Applicant(s)

KIRCHGEORG ET AL.

Examiner

Carl H. Layno *Carl H. Layno* 5/1/05

Art Unit

3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 December 2003.  
2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-39 is/are pending in the application.  
4a) Of the above claim(s) 1-10 is/are withdrawn from consideration.  
5) ☒ Claim(s) 12 is/are allowed.  
6) ☒ Claim(s) 11, 13, 15 and 16 is/are rejected.  
7) ☒ Claim(s) 14 and 17-39 is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 03 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Reissue Application***

1. Acknowledgment is made of applicant's request for a reissue of U.S Patent No. 6,327,497. This request, along with attached papers, were received and approved by the Office on December 3, 2003. A subsequent office action follows.

### ***Preliminary Amendment***

2. Acknowledgment is made of applicant's preliminary amendments to the claims and specification, which were made of record on December 3, 2003.

3. Claims 1-10 are canceled. Claims 11-39 have been added and are active.

### ***Drawings***

4. Acknowledgment is made of applicant's transfer of formal drawings from U.S Patent No. 6,327,497 to this application.

### ***Specification***

5. The disclosure is objected to because of the following informalities:

-p.1 of the specification, lines 1-5, the priority data of the first paragraph in the specification should be updated to reflect the fact that U.S Application Serial No. 10/457,958 is now U.S Patent No. RE38533.

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Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 11 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Anderson '842.

The Anderson '842 patent describes a portable pulmonary respirator system (Fig.1) including an oxygen bottle 10 and delivery system (elements 11-18). The system includes an oxygen contents measurement gage 30 (col.2, line 22), which is part of the oxygen regulator assembly at the output of the oxygen bottle 10. The entire system is enclosed in a single suitcase-type carrying case 9. By definition, the "suitcase-type carrying case" 9, like other suitcases, would inherently be equipped with a handle for carrying by one hand of a person.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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9. Claims 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson '942 in view of Remes et al '801.

The Remes et al '801 patent describes an oxygen sensing and delivery system (Fig.1) including an in-line oxygen sensing and communications module 14 (Fig.2) capable of monitoring oxygen concentration 28 and oxygen flow 30 from a source of oxygen 10 to a patient. Additionally, a blood oximeter may be connected to the system so that a patient's blood gas information can be monitored (col.2, lines 4-5).

To have equipped the system of Anderson '942 with an in-line oximeter would have been an obvious modification to one of ordinary skill in the art in order to better monitor blood gas information in the patient, and by extension, patient compliance in receiving the oxygen as part of a prescribed regimen, as taught by Remes et al '801 (col.1, lines 55-59).

#### *Allowable Subject Matter*

10. Claims 14 and 17-39 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

11. Claim 12 is allowed.

#### *Conclusion*

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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The Kirchgeorg et al '973 and Amasi et al '048 patents describe portable oxygen delivery systems utilizing unitary casings. Unlike applicant's claimed system, these systems fail to recite any a "measurement system" for measuring blood or gas content in the manner claimed by the applicant.

The Labuda et al '978 patent describes an in-line oxygen monitoring apparatus for monitoring oxygen flow to a patient. Unlike applicant's device, this monitoring apparatus is not encased with an oxygen delivery system in the manner claimed by the applicant.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carl H. Layno whose telephone number is (571) 272-4949. The examiner can normally be reached on Monday thru Thursday from 9 AM to 6 PM and every other Friday between 9AM and 5PM. A voice mail or E-mail message ([carl.layno@uspto.gov](mailto:carl.layno@uspto.gov)) may be left if desired.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes, can be reached on (571) 272-4955. All faxed correspondence should be sent to the Office's Official FAX number (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Legal Instruments Examiner (LIE) Brenda Webb whose telephone number is (571) 272-4399.

  
CARL LAYNO  
PRIMARY EXAMINER

CHL

5/1/2006